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February 13, 2018

Sally Hernandez, Sheriff
Travis County Sheriff's Office
P.O. Box 1748
Austin, Texas 78767

LETTER DECLINING PROSECUTION AFTER INVESTIGATION

RE: Officer-Involved Shooting on February 15, 2017 by Travis County Deputies Stephen Shockey #4094 and Samuel Gonzales #4691 Involving Charles Werchan

Dear Sheriff Hernandez:

The Office of the Travis County District Attorney has reviewed the Travis County Sheriff's Office (TCSO) Major Crimes investigation of the above-referenced matter and concluded our independent review of the officer-involved shooting in which Travis County Deputies Stephen Shockey and Samuel Gonzales discharged their firearms in the direction of Charles Werchan after they witnessed him shoot his ex-girlfriend, Lopez. This letter is to inform you of my decision to decline prosecution of criminal charges against Deputies Shockey and Gonzales. My decision does not limit or address administrative action by the Travis County Sheriff's Office, or other civil actions, where non-criminal issues may be reviewed and where different rules and lower levels of proof apply.

The District Attorney's Office has reviewed the investigation of the Travis County Sheriff's Office into this incident pursuant to the officer-involved shooting protocol that is attached and posted on the District Attorney official website. A copy of this letter will also be posted on the District Attorney official website.¹

Based on the available evidence and under applicable Texas law,² I am convinced that a jury following the law would not convict Deputies Shockey and Gonzales, because the evidence proves the use of force was justified under Texas law as a lawful exercise of self-defense, defense of third person, and was a lawful use of force to effect an arrest. The following sets forth the facts determined during our review and provides the legal analysis underlying my decision.

¹ <https://www.traviscountytexas.gov/district-attorney/cru>

² In arriving at this conclusion, I have relied upon the legal guidelines governing the use of force/deadly force in Texas as set forth in sections 9.32, 9.33 and 9.51 of the Texas Penal Code, the case authority construing that provision, and the United States Supreme Court case authority governing law enforcement use of force.

SUMMARY OF FACTS

At 2:26 p.m. on February 15, 2017, the Bastrop Police Department notified the Travis County Sheriff's Office of an aggravated kidnapping that had just occurred at the Sport Clips in Bastrop, Texas. According to the Bastrop Police Department, the suspect, Charles Werchan, had abducted his ex-girlfriend, Lopez, at gunpoint at her place of employment in front of several witnesses. (See Figure 1 and 2) A description of Werchan and his vehicle was broadcast over police radio. The Bastrop Police Department pinged Werchan's cellphone to a location on westbound State Highway 71 (HWY 71) in Travis County, near Burch Drive. A Department of Public Safety helicopter (DPS 100), already in the area, was diverted to assist in the search for Werchan's vehicle. TCSO deputies were alerted via radio broadcast that Werchan and Lopez had most likely entered their jurisdiction.

Deputy Samuel Gonzales and Deputy Stephen Shockey were riding together in the same patrol car when they turned off HWY 71 onto Burch Drive around 2:51pm. As they passed by a church, they noticed a male and female standing just off the roadway to their right on church property near a utility pole. (See Figure 3) The male waved his hand at the deputies as they drove past them. Deputy Gonzales continued driving while Deputy Shockey checked to see if the male matched the description of the Bastrop aggravated kidnapping suspect. Once Deputy Shockey confirmed that the male's clothing seemed similar enough to warrant further investigation, he instructed Deputy Gonzales to turn the patrol car around and drive back towards the couple so that they could make contact. (See Figure 4) Both deputies exited the patrol car and were walking towards the couple when they witnessed the male shoot the female. Both deputies immediately drew their pistols and fired at the male.³ (See Figure 5) At the same time, Deputy Shockey observed the male suspect put the gun in his hand to his own head and shoot himself. Captain LeBlanc, who arrived on scene just after the shooting, called out, "shots fired, two down" over the radio.

Responding deputies secured the scene and began administering medical aid to the victim and the suspect, who were lying on the ground, with apparent gunshot wounds. (See Figure 6) Deputies reported that the female victim had a gunshot wound to her head and did not appear to be breathing. The female, later identified as Lopez, was pronounced deceased at the scene at 3:21 p.m. The male suspect, later identified as Charles Werchan, was transported by EMS to the South Austin Hospital with a gunshot wound to his head. Werchan did not survive his injuries.

Detectives assigned to the TCSO Major Crimes division began their investigation into this incident shortly after the officer-involved shooting occurred. TCSO crime scene technicians, and representatives from the Texas Rangers, as well as representatives from the District Attorney's Office responded to the crime scene to assist and monitor the investigation.

DEPUTY STATEMENTS AND INTERVIEWS

Walk-Through Statements by Deputies Shockey and Gonzales

Shortly after the shooting, Deputy Shockey and Deputy Gonzales agreed to participate in independent, "walk-throughs"⁴ of the scene so that detectives could better understand what had occurred. Each

³ In the patrol video you can see Lopez fall to the ground before Deputy Shockey fires and you can see the direction she fell.

⁴ "Walk-through" after an officer-involved shooting occurs, investigators often ask the officers who fired shots if they would be willing to participate in a walk-through of the scene to explain how the critical incident unfolded. This walk-through is conducted out of the hearing range of other law enforcement and civilian witnesses. Detectives, crime scene technicians, members of the District Attorney's

deputy had their attorney present as they described in detail how this critical incident unfolded.

Deputy Shockey explained in his walk-through that on this day, he was the field training officer for Deputy Gonzales. As part of his training, Deputy Gonzales was driving Deputy Shockey's patrol car when they heard a BOLO⁵ broadcast over the police radio. They self-assigned to the call because they were close to the location where the cellphone of the suspect was reportedly pinging. When they turned onto Burch Drive they saw two individuals standing near the roadway. The male subject made a gesture that appeared to be a wave as they drove past. After determining that the male's clothing closely matched the description in the BOLO⁶, Deputy Gonzales turned the patrol car around and drove back towards the couple they had just passed. Deputy Gonzales parked and both deputies exited their side of the patrol car. After walking just a short distance towards the couple, Deputy Shockey observed the male suspect pull out a handgun and shoot the female. Deputy Shockey then drew his firearm and fired at the male suspect. While he was firing, Deputy Shockey witnessed the male put his gun to his head and then fall to the ground. Deputy Shockey announced, "Shots fired" over the police radio.

In Deputy Gonzales' walk-through, he told investigators that he was currently in the second phase of his Field Training Officer Program. Deputy Gonzales explained that after he saw the male suspect shoot the female, he discharged his firearm at the suspect.⁷

Deputy Shockey's Interview

According to Deputy Shockey, as they parked, the couple was standing facing each other 7 to 10 feet apart. The couple was just talking and there didn't appear to be anything going on. Deputy Shockey exited the passenger side of the patrol car to make a standard approach. At about 10 to 15 feet from the patrol car, Deputy Shockey started to walk at an angle across the street towards the couple. Deputy Shockey then observed the male display a handgun in his left hand.⁸ Deputy Shockey doesn't know if the male pulled it from his pocket or his waistband. According to Deputy Shockey, Werchan pulled the gun out and pointed it at Lopez. There was no opportunity for the deputies to say anything to the male. As soon as the male pulled the gun out and straightened out his arm, the male pulled the trigger. Deputy Shockey witnessed the female's head snap back and he saw her glasses fall off the back of her head. Deputy Shockey feared the male was going to turn and shoot at them. Deputy Shockey believed he had just witnessed a murder. Deputy Shockey returned fire while walking forward. Next, Deputy Shockey saw the male pull the gun up and aim at his own head and then fall. When the male fell backwards, he was still gripping the gun in his hand. Deputy Shockey explained that he wouldn't have been able to draw fast enough if the male had turned and fired at them. Deputy Shockey felt that they had no safe cover to retreat to without the threat of being shot. Deputy Shockey believed his only option was to end the threat before the male shot him. This incident is the first time Deputy Shockey has discharged a firearm at a person.

Deputy Gonzales' Interview

In his interview, Deputy Gonzales explained that after he turned their patrol car around, he parked 30 to

Office, the involved deputies' attorneys are all usually present during a walk-through. The purpose of the walk-through is to assist in evidence collection, scene documentation and to give a short summary of what occurred to those monitoring the investigation.

⁵ BOLO means "Be On the Lookout"

⁶ Bastrop Police Department put in their BOLO that the suspect was a white male with short hair wearing a white t-shirt, long baggy black pants and black shoes. Werchan was actually wearing long baggy black shorts.

⁷ Deputy Gonzales did not mention seeing the male suspect turn the gun on himself.

⁸ Werchan is seen on the Sport Clips video holding his gun in his right hand. Medical Examiner's report confirms a self-inflicted gunshot wound to the right side of Werchan's head consistent with Werchan holding the gun in his right hand. This discrepancy does not affect the analysis of the use of force in this case.

35 feet away from the couple. Deputy Gonzales stated that at this time the couple was standing a few feet from one another talking. Deputy Gonzales noticed that the male had both his hands in front of him at his waistband and that he had his t-shirt tucked in to where you could see his hands. The female was standing at the edge of the road, while the male was further from the roadway by the utility post. Deputy Gonzales believes Deputy Shockey exited the patrol car before him. As they both started walking toward the couple, Deputy Gonzales saw the male produce a handgun and point it at the female. Before Deputy Gonzales could get into a firing position, he heard the male fire shots. Deputy Gonzales recalls that he then fired 2 or 3 shots at the male, however, he did not recall hearing Deputy Shockey's shots. As soon as Deputy Gonzales saw the male fall, he stopped firing. The male still had his gun in his left hand as he fell. Deputy Gonzales held cover while Deputy Shockey retrieved the male's weapon and unloaded it. At this time, other deputies began arriving on scene. When Deputy Gonzales went to check on the condition of Lopez he was unable to find a pulse. Deputy Gonzales recalled that Lopez was lying face up and that a gunshot wound was not visible on her face. Other deputies arrived and told him he needed to step away from the scene.

Statement of TCSO Captain Alred LeBlanc

Captain Le Blanc was nearby when he heard TCSO's dispatch broadcast that the cellphone connected to the Bastrop County Aggravated Kidnapping was pinging on Burch Drive. After hearing this update, Captain Le Blanc turned into the church parking lot next to Burch Drive. As Captain Le Blanc drove through the church parking lot he observed Lopez standing near a utility pole facing an east. He also saw Werchan standing a few feet away from Lopez. Captain LeBlanc saw Deputy Shockey and Deputy Gonzales approaching the couple from the north. Next, Captain LeBlanc heard gunshots and saw Lopez fall onto her back. Captain LeBlanc saw smoke coming from the deputies' guns, and then witnessed Werchan fall. Captain Le Blanc ran down the hill to where Deputy Shockey and Deputy Gonzales were holding Werchan at gunpoint. Deputy Shockey told Captain LeBlanc that Werchan had shot Lopez. Captain Le Blanc checked on Lopez who was lying on her back with her right arm above her head. Captain Le Blanc was unable to get a pulse on Lopez. Captain Le Blanc observed what appeared to be an entrance wound on the right side of Lopez's face. Captain Le Blanc announced "shots fired" for a second time over the police radio and told dispatch that he believed the deputies had shot the male. Captain Le Blanc assisted with coordinating medical aid to Lopez and Werchan.

VIDEO EVIDENCE

Detectives canvassed the area for security cameras that may have captured the shooting incident on surveillance video. The security cameras at the church where Werchan parked his vehicle were found to be not operational. A surveillance camera⁹, at an office northwest of the scene, captured images that corroborate the deputies' accounts of the incident and provides evidence of how quickly the encounter escalated into a deadly force situation.

15:48:34	Lopez and Werchan walking in the grassy area north of the church towards Burch Drive
15:50:05	Deputies' patrol car drives down Burch Drive passing Lopez and Werchan
15:50:33	Deputies' patrol car makes turns around and travels back towards Lopez and Werchan
15:50:54	Deputy Gonzales parked their patrol car
15:50:56	Deputy Shockey can be seen exiting the patrol car

⁹ The time stamp on the officer video is one hour ahead of the actual time.

15:51:01 The gravel truck passes the couple and continues to drive slowly down Burch Drive
 15:52:16 Two K-9 units responded to the scene just seconds after the shooting
 15:52:27 DPS 100 helicopter's shadow can be seen on the ground at the scene

Deputy Shockey's patrol car video

Werchan and Lopez can be seen standing, facing one another, near a utility pole on the east side of Burch Drive. Lopez is wearing black clothing and Werchan has on a white shirt with dark colored long baggy shorts. Due to the position of the patrol unit's camera, Werchan and Lopez were not visible at the time of the shooting.

14:51:01 Patrol car travels north down Burch Drive passing Lopez and Werchan
 14:51:25 Patrol car goes a short distance northbound before making a U-turn at a driveway.
 14:51:54 Patrol car stops and parks facing Werchan and Lopez
 14:52:07 Deputy Shockey exits the passenger side of the patrol car and walks into the camera's view
 14:52:16 The first shot can be heard. Deputy Shockey draws his weapon and points it in the direction of Werchan and Lopez
 14:52:17 Lopez falls to the ground perpendicular to the roadway. Seven additional shots are fired, a deputy is heard shouting, "Drop the gun"
 14:52:21 A Deputy announces over the police radio, "Shots fired 4000 block of Burch Drive. We have two down." Deputies can be heard yelling, "Drop the weapon" to Werchan

CIVILIAN WITNESS STATEMENTS

Patrol Deputies, who responded to the scene, assisted investigators with locating and identifying potential witnesses to the shooting.

Eric Billig

Eric Billig's company, located at 4200 Burch Drive, drove by the couple walking in the middle of the street around 3:00pm. Billig described the couple as, "standoffish" from one another." He thought they were possibly arguing based on their body language. Three to five minutes later, Billig heard, "pop, pop, pop." Billig described this sound as 6 to 8 gunshots. Billig reported that he did not witness shooting and neither did any of the passengers in his car.

18 Wheeler (Belly Dump Truck)

A white colored gravel truck is captured in Shockey's patrol car video passing the unit at the same time Deputy Shockey is seen exiting the passenger side of the car to approach Werchan and Lopez. Detectives went to several businesses in area in order to locate the dump truck driver. Detectives visited nearby mechanic shops with large trucks, but no vehicles matching the dump truck were located. The driver of the dump truck was never identified, and therefore, not interviewed.

Rosemary Saucedo

Detectives interviewed Rosemary Saucedo and determined that she was too far away from the incident to give an accurate account of the shooting.

Iris Rodriguez

Detectives interviewed Iris Rodriguez and determined that she arrived after the incident.

Detectives gave their business cards to the individuals that they interviewed and asked them to have additional witnesses contact them. No one else came forward with relevant information.

EVIDENCE RECOVERED FROM THE SCENE

Werchan's Pockets

After the shooting, Deputy Marco searched Werchan and found an additional handgun and ammunition in his pocket. The gun Deputy Marco found was a small caliber chrome semi-automatic pistol with wood colored grips. Also found on Werchan was a box of Winchester .25 auto-ammunition, two packages of Newport cigarettes, cellphone, keys, 3 cigarette lighters, a black sock, and money. (See Figure 11 and 12)

Werchan's Vehicle

Werchan's black Ford Mustang was found parked underneath the awning of a church adjacent to the scene. The Mustang was searched pursuant to a search warrant. Inside the car, investigators found several rounds of live .25 and .380 caliber ammunition.

MEDICAL EXAMINERS' AUTOPSY REPORTS

Lopez

The death of Lopez was investigated by the Travis County Medical Examiner's Office under the statutory authority of the Medical Examiner jurisdiction. The postmortem examination was performed by Satish Chundru, D.O., Deputy Chief Medical Examiner, on 2/16/2017, at the Travis County Medical Examiner Office, Austin, Texas. The autopsy report noted that the cause of death was two gunshot wounds and the manner of death was homicide. According to the toxicology report authored by Chief Forensic Toxicologist, Dr. Brad Hall, Lopez did not have any detectable amount of ethanol (alcohol) or routinely tested drugs in her system when she was killed. There are two documented gunshot wounds. Lopez was shot once in the right side of her face and that projectile traveled through her brain exiting the left side of her scalp.¹⁰ This projectile was not recovered at the scene and therefore could not be submitted for ballistics testing. There is a second gunshot wound that entered the right side of Lopez's upper torso and lodged in her lower back. This bullet was collected by Dr. Chundru at autopsy and preserved as evidence to be analyzed by a ballistics' expert at the Texas Department of Public Safety's, (DPS) Crime Laboratory.¹¹ During an interview with Dr. Chundru, he reported that he could not make a determination as to the range of fire due to the absence of any soot or stippling at Lopez's entrance wounds.

Charles Werchan

The death of Charles Werchan was investigated by the Travis County Medical Examiner's Office under the statutory authority of the Medical Examiner jurisdiction. The postmortem examination was performed by Sam Andrews, M.D., Deputy Medical Examiner, on 2/18/2017, at the Travis County Medical Examiner Office, Austin, Texas. An autopsy and toxicology report were completed. The autopsy report noted that the cause of death was a gunshot wound of the head and the manner of death was suicide. According to the toxicology report authored by Chief Forensic Toxicologist, Dr. Brad Hall, Werchan had methamphetamine, amphetamine, alprazolam, diazepam, nor diazepam and hydrocodone in his system at the time he died. Dr. Andrews documented one gunshot wound to the back right side of Werchan's head with no visible exit wound. The report reflects that there is soot on skin surrounding the entrance wound edges. During a subsequent interview with Dr. Andrews, he explained that details of the investigation in combination with the presence of soot at the wound entrance caused him to conclude that this was a self-inflicted gunshot wound fired at close range. The

¹⁰ In the patrol video you can see Lopez fall to the ground before Deputy Shockey fires and can see the direction she fell.

¹¹ DPS Firearms/Toolmark Laboratory Report, dated September 7, 2017 this fired brass jacketed projectile fragment was positively identified as having been fired from Werchan's 380 semi-automatic pistol collected at the scene.

direction of travel of the projectile was back to front, right to left with both upward and downward trajectory. Two fragments of the lead portion of the projectile were found in Werchan's front left side of brain. Two fragments of the projectile's jacket were also found in his brain. These four projectile fragments were packaged and sealed in evidence envelopes to be sent to DPS Crime Laboratory for ballistic testing.

FIREARM AND TOOLMARK ANALYSIS

TCSO crime scene technicians responded to the scene and collected evidence, including Deputy Gonzales' and Deputy Shockey's 9MM handguns, Werchan's two handguns, shell casings found in the grass near the utility pole and shell casings located in the street. This ballistic evidence, along with the projectiles collected by the medical examiners, was sent to DPS Crime Laboratory to be analyzed. There was no ballistic evidence that would indicate any of the rounds fired by the deputies struck Werchan or Lopez.¹² According to the medical examiner's report, Werchan sustained a single gunshot wound to the head.¹³ Four projectile fragments were collected from Werchan's head at autopsy and analyzed by DPS firearms lab expert, Tim Counce. The four projectile fragments submitted from Werchan's head consisted of two fired brass bullet jacket fragments, one fired lead core, and one small lead fragment. During a subsequent interview with Counce, the expert explained, "of these items, only the brass bullet jacket fragments would contact the rifling of the barrel; the submitted lead core and lead fragment, if it was originally part of the submitted lead core, would have been positioned in the interior of the bullet, and thus shielded from the rifling of the barrel. As a result, there is no microscopic analysis that can be conducted on the lead core and the lead fragment. Based upon the total, combined weights of the submitted brass bullet jacket fragments, the lead core, and the lead fragment, it is our opinion these submitted items were likely components of one fired bullet." The submitted fired brass jacket and brass jacket fragment which contained rifling sufficient for analysis were positively identified as having been fired from Werchan's .380 semi-automatic pistol. (See Figure 13) The fired brass jacketed bullet fragment collected from the left side of Lopez's back at autopsy was positively identified as having been fired from Werchan's .380 semi-automatic pistol. (See Figure 13)

EVIDENCE THAT WERCHAN SHOT LOPEZ IN THE HEAD

The three fired shell casings found near Werchan after he was shot were positively identified by DPS firearm's expert, Tim Counce, as having been fired from Werchan's .380 pistol. (See Figure 9 and 10) From the DPS ballistics report, we know that Werchan shot Lopez in the torso and himself in the head with two of his three fired rounds. Because his third projectile was not recovered at the scene or collected during Lopez's autopsy, the District Attorney's Office asked lead detective, Jim Anderson, to review the entire case file and to issue an opinion regarding who was most likely responsible for Lopez's gunshot wound to the head.

Det. Anderson has thirty-one and a half years' experience in law enforcement with twenty-two years of that experience dedicated to investigating crimes involving the use of firearms. During his career, Det.

¹² After examination and testing, DPS forensic scientist, Tim Counce, concluded that Deputy Shockey fired his 9mm semi-automatic pistol two times and that Deputy Gonzales fired his 9mm semi-automatic pistol three times. (See Figure 7 and 8) The location of the deputies' fired shell casings collected at the scene was consistent with Deputy Gonzales exiting the driver's side and Deputy Shockey exiting the passenger's side and each deputy firing in close proximity to their patrol car. Deputy Shockey's in car video of the shooting supports the ballistic evidence collected at the scene as the deputies' versions of how the events unfolded.

¹³ Three fired .380 shell casings collected near the utility pole were positively determined to have been fired from Werchan's .380 semi-automatic pistol. There was no ballistic evidence to suggest that Werchan fired the .25 caliber pistol located in his pocket during the incident.

Anderson has responded to the scenes of murders, aggravated assaults, officer-involved shootings and suicides where he has had the opportunity to examine hundreds of gunshot wounds to individuals. Det. Anderson responded to the scene of this officer-involved shooting shortly after it occurred. Det. Anderson, as lead detective, was present for the crime scene collection of evidence, the walk through interviews of the deputies, the subsequent interviews of the deputies and he has reviewed the entire case file. Based on patrol car video, Det. Anderson immediately eliminated Deputy Shockey as the person responsible for firing the shot that impacted Lopez's head, but he could not rule out Deputy Gonzales as the shooter without further investigation. According to Det. Anderson, Lopez's body position and the direction in which she fell after she was shot is critical to determining who shot her in the head. Lopez is standing next to a utility pole with her back toward the street when the patrol car parks. Werchan is standing a few feet away from Lopez facing her. Seconds later, the deputies make their approach from the south and Lopez can be seen falling on her back with her head towards the street and her feet facing the field.¹⁴ First responding deputies¹⁵ described Lopez's position as being on her back with her head towards the street. According to the scene photos and medical examiners autopsy report, Lopez was shot on the right side of the face just under the eye. The medical examiner described the wound pathway with the body in the normal anatomic position as right to left front to back and upwards. According to Det. Anderson, "if you will take a look at the scene photos you will see that she is shot on the right side of the face just under the eye. Werchan is standing to the right of Lopez as the Deputy Gonzales parks the patrol car. She would have had to face the deputies in order to be shot by one of them. She could have possibly turned, but then she would have fallen south toward the church after being shot, therefore not falling backwards toward the roadway away from the Werchan like she did. The shot also traveled right to left and upwards. Werchan was the only person that standing below her. The deputies were on the pavement and taller than she was, therefore making it impossible to be an upward shot." Based on his review of the entire case file, as well as multiple visits to the scene, Det. Anderson concluded that Werchan is responsible for shooting Lopez in the torso, as well as the head.

RELEVANT LEGAL PRINCIPLES

A law enforcement officer is authorized to make an investigatory stop of an individual upon a showing of reasonable suspicion.¹⁶ Officers who witness a crime in his or her presence may arrest an individual without a warrant.¹⁷ The right to make this arrest carries with it the right to use some degree of physical coercion or threat thereof to effect it.¹⁸ The force used to make that arrest must be judged from the perspective of a reasonable officer on the scene and must be "objectively reasonable" under the circumstances.¹⁹

A person commits the offense of aggravated assault if he intentionally, knowingly, threatens another with bodily injury and uses or exhibits a deadly weapon during the commission of the assault.²⁰ "Deadly weapon" includes, among other things, a firearm.²¹ A "firearm" is any device designed,

¹⁴ Deputy Gonzales: he saw Werchan point and heard and saw shots go off with Werchan's weapon pointed at Lopez. Deputy Shockey: the gun came straight out to the female and as he pulled the gun out and straightened his arm out he pulled the trigger. Deputy Shockey saw her head snap back and her glasses fall off the back of her head.

¹⁵ Deputy Gilbert Hernandez, "I also saw a female who was also lying on the ground approximately 20 feet from the male, she was dressed in a black shirt and pants with the 'Sports Clip' logo on her shirt, and she too was in a supine position with her head pointing towards the west and her feet pointing towards the east.

¹⁶ *Derichsweiler v. State*, 348 S.W.3d 906 (Tex. Crim. App. 2011); *Terry v. Ohio*, 392 U.S. 1 (1968).

¹⁷ TEX. CODE CRIM. PROC. §14.01. *Beck v. Ohio*, 379 U.S. 89 (1964); *Beverly v. State*, 792 S.W.2d 103 (Tex. Crim. App. 1990).

¹⁸ TEX. PENAL CODE § 9.51.

¹⁹ *Graham v. Connor*, 490 U.S. 386 (1989).

²⁰ TEX. PENAL CODE § 22.01(a)(1); 22.02 (a)(2).

²¹ TEX. PENAL CODE § 1.07(A)(17).

made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.²²

Deputy Gonzales and Deputy Shockey both admit to pointing and firing their 9MM handguns in the direction of Werchan after they witnessed him display a pistol and shoot Lopez. The deputies' 9MM handguns are firearms by design and thus meet the definition of a deadly weapon.²³ Without further consideration of other facts or available legal defenses, a preliminary analysis shows both deputies firing at Werchan meets the elements of aggravated assault and thus could subject them to criminal prosecution.

It is, however, a defense to criminal prosecution if a person's conduct is justified.²⁴ Potential justifications for Deputy Gonzales' and Deputy Shockey's conduct, and thus potential legal defenses to criminal prosecution, include self-defense, defense of third persons, and what is commonly referred to as the law enforcement justification. Each justification is discussed below.

Self-defense:

A person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force.²⁵

Use of deadly force in self-defense:

A person is justified in using *deadly* force against another if the actor would be justified in using force against the other as described above, and when and to the degree the actor reasonably believes the deadly force is immediately necessary to protect the actor against the other's use or attempted use of unlawful deadly force.²⁶ A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in criminal activity at the time the deadly force is used is not required to retreat before using deadly force.²⁷

Use of force or deadly force in defense of third person:

A person is justified in using force or deadly force against another to protect a *third person* if under the circumstances as the actor reasonably believes them to be, the actor would be justified in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect, and the actor reasonably believes that his intervention is immediately necessary to protect the third person.²⁸

Law enforcement justification:

A peace officer is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search, or to

²² TEX. PENAL CODE § 46.01(3).

²³ TEX. PENAL CODE § 1.07(A)(17).

²⁴ TEX. PENAL CODE § 9.02.

²⁵ TEX. PENAL CODE § 9.31(a).

²⁶ TEX. PENAL CODE § 9.32(a).

²⁷ TEX. PENAL CODE § 9.32(c).

²⁸ TEX. PENAL CODE § 9.33.

prevent or assist in preventing escape after arrest, if the actor reasonably believes the arrest or search is lawful or, if the arrest or search is made under a warrant, he reasonably believes the warrant is valid; and before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.²⁹

Deadly force law enforcement justification:

A peace officer is justified in using *deadly* force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest, or to prevent escape after arrest, if the use of force would otherwise be justified and the actor reasonably believes the conduct for which arrest is authorized included the use or attempted use of deadly force, or the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.³⁰

APPLICATION OF THE LAW TO FACTS

This declination letter addresses whether or not Deputy Gonzales and Deputy Shockey should be held criminally liable for committing the felony offense of aggravated assault or if their conduct was justified under the law.³¹ The analysis does not turn on whether or not the deputies' rounds impacted Werchan or Lopez, but rather whether or not the deputies' decision to use deadly force was objectively reasonable and authorized under the law.

Law Enforcement Justification

When the deputies located Werchan close to where the cellphone was pinging, wearing clothes described in the BOLO, and standing next to a female, they had reasonable suspicion to make an investigatory stop. As the deputies made their approach, Werchan suddenly shot Lopez. Instead of investigating an aggravated kidnapping, they were now authorized to make an arrest of an armed suspect for an aggravated assault that had been committed in their presence.³² After witnessing Werchan shoot Lopez, it was apparent to deputies that Werchan was armed with what appeared to be a functioning firearm that he was not afraid to use. In the middle of the street, the deputies had no cover and no way of knowing who Werchan's would target next. Under the law enforcement justification, the deputies' decision to use deadly force was both reasonable and immediately necessary to effect the arrest of Werchan and prevent him from harming others.

Self Defense/Defense of Third Persons

The application of the law of self-defense and defense of third parties to the facts of this case are essentially the same analysis. In a matter of seconds, the deputies were faced with the need to defend themselves, as well as Lopez, against Werchan's threat of deadly force. The deputies stated in their interviews that they did not know if Werchan was going to begin firing at them or at someone else. From the patrol car video, we know that the entire encounter took place in a little over 10 seconds. Because this law enforcement encounter escalated so quickly to a lethal confrontation, there was little

²⁹ TEX. PENAL CODE § 9.51(a).

³⁰ TEX. PENAL CODE § 9.51(c).

³¹ While it is possible, but highly unlikely, that one of the deputies' shots struck Lopez in the head, the circumstances that would justify the deputies' use of deadly force against Werchan, would also apply to Lopez.

³² TEX. CODE CRIM. PROC. ART. 14.01.

time for the deputies to issue commands to Werchan, call for back up or to safely retreat. A reasonable law enforcement officer similarly situated, would have used deadly force to protect themselves, the community and Lopez from further injury.

CONCLUSION

For these reasons, I have concluded that the filing of criminal charges against Deputies Stephen Shockey and Samuel Gonzales are neither appropriate nor supportable under Texas criminal law standards because both deputies' use of deadly force in this incident was justified under the circumstances. Consequently, charges will not be filed. We are closing our review and will take no further action in this matter.

We have released a public/press packet that includes videos, witness statements, deputy statements, forensic reports, photos, and an autopsy report. This decision will be posted on my Office's website and will be accessible under Charles Werchan and the date of the incident, February 15, 2017³³

Very truly yours,

A handwritten signature in black ink that reads "Margaret Moore". The signature is written in a cursive, flowing style.

Margaret Moore

³³ <https://www.traviscountytexas.gov/district-attorney/cru>



Figure 1. Sport Clips' surveillance video of Werchan pointing his gun at an employee with his right hand

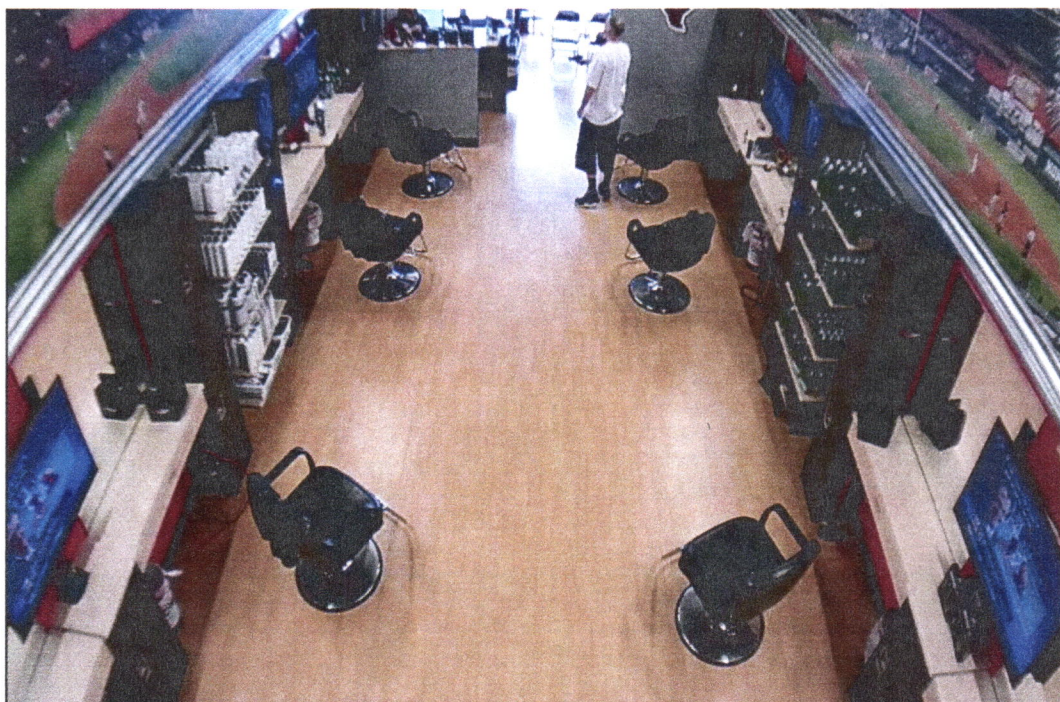


Figure 2. Sport Clips' surveillance video of Werchan pointing his gun at an employee



Figure 3. View of Deputies Shockey and Gonzales as they drive by Werchan and Lopez



Figure 4. View of Deputies Shockey and Gonzales as they park to make their approach



Figure 5. Deputy Shockey firing his weapon after Lopez has fallen to the ground



Figure 6. Scene overview



Figure 7. Deputy Gonzales' fired shell casings



Figure 8. Deputy Shockey's fired shell casings



Figure 9. Werchan's fired shell casings



Figure 10. Closer view of Werchan's fired shell casings



Figure 11. Items found in Werchan's pockets after he shot himself



Figure 12. Handgun found in Werchan's pocket



Figure 13. Werchan's .380 handgun